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In The

Supreme Court of the United States

CIGNA PROPERTY AND CASUALTY,
Petitioner,

v.

TERESA VILLAR RUIZ

and

ANTONIO RUIZ,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

Frank J. Sioli, Jr.
Counsel of Record
Lawrance B. Craig, III
VALLE , CRAIG, SIOLI,
LYNOTT, P.A.
9155 South Dadeland Boulevard
Dadeland Centre, Suite 1000
Miami, Florida 33156
(305) 373-2888

Counsel for Petitioner

THE LEX GROUP ♦ 1108 East Main Street ♦ Suite 1400 ♦ Richmond, Virginia 23219
(804) 644-4419 ♦ (800) 856-4419 ♦ Fax: (804) 644-3660 ♦ www.thelexgroup.com

QUESTIONS PRESENTED

1. Whether the lower court erred in determining that the State Court had jurisdiction to interpret and apply the Longshore and Harbor Workers' Compensation Act in order to modify the Order of a Federal Administrative Law Judge.

2. Whether the lower court erred in applying the Rocker-Feldman Doctrine to determine that it lacked subject matter jurisdiction over the Interpleader claim.

LIST OF PARTIES TO PROCEEDING

The parties in the proceeding below are those listed in the caption.

CORPORATE DISCLOSURE

Petitioner CIGNA Property and Casualty was formerly engaged in the business of providing workers' compensation and other insurance to various businesses, in this claim under the name of a subsidiary, Pacific Employers Insurance Company. In July 1999, ACE Limited acquired the international and domestic property and casualty business of CIGNA. ACE Limited is a publicly held corporation. Wellington Management Company owns 13.2 percent of the company and SMR Corporation owns 10.1 percent of the company.

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Petitioner CIGNA Property and Casualty respectfully petitions for a Writ of Certiorari to the decision of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The District Court's Order dismissing the Complaint for lack of subject matter jurisdiction was entered on January 21, 2003. This opinion is set forth in the Appendix at A-3a. The United States Court of Appeals for the United States Eleventh Circuit's Order affirming the Order of the District Court was entered on October 15, 2003, and it is set forth in the Appendix at A-2a.

STATEMENT OF JURISDICTION

The Decision of the United States Court of Appeals for the Eleventh Circuit sought to be reviewed was decided on October 15, 2002. There has been no Order respecting rehearing, and no Order granting extension of time to file a Petition for Writ of Certiorari. There has been no Cross-Petition for Writ of Certiorari filed. Jurisdiction to review the Decision in question by Writ of Certiorari is conferred on this Court by 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

33 U.S.C. § 916 provides:

> No assignment, release or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid, and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of debt, which exemption may not be waived.

STATEMENT OF THE CASE

Statement of the Facts

Defendant/Appellant, Antonio Ruiz, was injured on or about November 11, 1981, while in the employ of Potashnick Construction, and the resulting workers' compensation claim was accepted as compensable by Potashnick Construction and its Longshore Insurance Carrier, CIGNA, the Plaintiff herein. [R1]. As a result of the subsequent Longshore litigation between Postashnick Construction/Cigna and Defendant Antonio Ruiz concerning the nature and extent of the injury, a Joint Stipulation was prepared accepting Mr. Ruiz as permanently and totally disabled as of March 10, 1986, and a Compensation Order was entered by the Honorable E. Earl Thomas on June 8, 1990, memorializing the Joint Stipulation. [R1]. Pursuant to the Joint Stipulation and Order, Mr. Ruiz was to be paid based on the

compensation rate of $496.70 per week, and said benefits were initiated to Mr. Ruiz on a timely basis. [R1].

However, as a result of a marriage dissolution proceedings instituted by Defendant, Teresa Villar-Ruiz (former wife of Defendant Antonio Ruiz), Case No. 92-041223, Florida Circuit Court Judge Rosa Rodriguez issued an Income Deduction order at Defendant, Teresa Villar-Ruiz' request, which purported to encompass Defendant Antonio Ruiz' workers' compensation payments under the Longshore and Harbor Workers' Compensation Act. [R1].

Subsequent to the issuance of the Family Court's Income Deduction Order, Plaintiff, CIGNA filed an objection to Income Deduction Order, which was overruled by the Family Court Judge on September 28, 2001. [R1]. The Family Court's Order directs CIGNA to withhold certain sums owed to Antonio Ruiz under the federal Compensation Order and pay them instead to Teresa Villar-Ruiz. The Family Court's Order was affirmed by Florida's Third District Court of Appeal. [R33]; *CIGNA Property & Casualty v. Ruiz*, 834 So.2d 234 (Fla. 1st DCA) *cert. denied* 124 S. Ct. 433 (2003).

Proceedings Below

This is an appeal by the Plaintiff, CIGNA, from a judgment against it in an Interpleader action filed to resolve a conflict between an order of a Federal Administrative Law Judge and an order of the State Circuit Court in a Longshore Act Workers' Compensation claim. The Complaint for Interpleader

was dismissed by the District Court after it determined that State Courts have jurisdiction to adjudicate matters under the Longshore Act, and therefore had no subject matter jurisdiction over the Interpleader action. A-3a. The Order of Dismissal entered by the District Court was then timely appealed the United States Court of Appeals for the Eleventh Circuit, which affirmed the District Court. (A-1a)

Basis for Federal Jurisdiction in the Court of the First Instance

The District Court Judge had jurisdiction over the Interpleader action pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et. seq.*

REASONS FOR GRANTING THE PETITION

IN DISMISSING THE INTERPLEADER COMPLAINT SEEKING TO RESOLVE THE CONFLICTS BETWEEN THE STATE ORDER AND THE FEDERAL ADMINISTRATIVE ORDER, THE ELEVENTH CIRCUIT DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, AND SHOULD BE, SETTLED BY THIS COURT.

At this point in time, despite this Court's denying certiorari in the companion State Court case, the Petitioner is still facing an unprecedented conflict of laws issue with respect to the two outstanding Orders. Indeed, while this Court ultimately denied certiorari in the State Court claim, which addressed the issues of whether or not the State Court correctly

interpreted the Longshore Act in holding that Mr. Ruiz's Longshore benefits could be executed upon to satisfy outstanding child support obligations, there is still the earlier Order of the Administrative Law Judge providing that the Petitioner direct Longshore benefits to Mr. Ruiz. By failing to reach a decision on the merits, the District Court never decided which Order should be followed, potentially leaving the Petitioner exposed to penalties to for failing to comply with Federal Administrative Order. *See* 33 U.S.C. §§ 914, 918 (2003).

The Courts below basically presented two reasons for failing to consider CIGNA's Interpleader on the merits. First, it was held that a State Circuit Court had the authority to interpret and apply the Longshore Act, and essentially modify the Compensation Order of a Federal Administrative Law Judge by using the doctrine of concurrent jurisdiction. However, the Longshore Act itself is a billboard for exclusivity of federal jurisdiction of Longshore and Harbor Worker's Compensation Act claims. *See* 33 U.S.C. § 901 *et. seq.* (2003). Therefore, Congress has preempted this particular area of Law, and the decisions below create an irreconcilable conflict with the Administrative Law Judge's earlier Order. *See Barnard v. Zapata Hayrie Corporation*, 975 F.2d 919, 921-922 (1st Cir. 1992); *Atkinson v. Carter, McBaird S/V Co.*, 838 F.2d 808, 812 (5th Cir. 1988); *Hall v. C&P Tel. Co.*, 809 F.2d 924 (D.C. Cir. 1987). In fact, with respect to all of the cases cited by the District Court in support of the concurrent jurisdiction argument, none actually involve a claim under the Longshore Act, for Worker's Compensation benefits, but rather either involve State Worker's

Compensation claims or pertain to § 5 of the Longshore Act which permits civil causes of action under limited circumstances. *See, e.g., Spears v. Kajima Engineering & Construction, Inc.*, 124 Cal. Rep. 2nd 97 (Cal. App. 2d Dist. 2002) (Plaintiff moving forward with civil cause of action for vessel owner negligence under § 5(b) of the Longshore Act.); *Ode v. Luedtke Engineering Co.*, 1997 WL 476830 (Ohio App. 8th Dist. 1997) (Plaintiff seeking damages in civil court under § 5(b) of the Longshore Act); *Babin v. North Florida Shipyards, Inc.*, 705 So.2d 66 (Fla. 1st DCA 1997) (Cause of action brought in civil court pursuant to § 5(a) of the Longshore Act); *Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715, 100 S. Ct. 2432, 65 L. Ed. 2d 458 (1980) (State worker's compensation system(s) may provide benefits to injured workers who are concurrently covered by the Longshore Act); *Allsouth Stevedoring Co. v. Wilson*, 469 S.E.2d 348 (Ga. App. 1996) (State Court interpreting state worker's compensation claim under the Georgia Worker's Compensation Act) and; *Moss v. Dixie Machine Welding & Metal Works, Inc.*, 617 So.2d 959 (La. App. 4th Cir. 1993) (State Court interpreting state worker's compensation claim under the Louisiana Worker's Compensation Act).

Because all the cases cited by the Courts below are inapposite to a worker's compensation claim brought under the Longshore Act, this Court must grant this petition for Writ of Certiorari and reverse the Decision of the Court below so the Employer/Carrier can obtain a decision on the merits with respect to which Order should be followed.

The next ground used for dismissing the Interpleader claim was the Rooker-Feldman Doctrine. However, Rooker-Feldman Doctrine was created to prevent federal court "appellate" review of a state court order. This doctrine is simply ill-suited for the facts herein where a complaintant is asking the court to decide between two conflicting Orders. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983). Again, similar to the District Court's analysis of the concurrent jurisdiction issue, none of the cases cited with respect to the Rooker-Feldman Doctrine involve the peculiar facts herein, where there are conflicting Orders issued by a State Court and Administrative Court. Indeed, the Rooker-Feldman Doctrine was created to prevent a party from essentially appealing a state order to a federal court, while the Interpleader action at bar was simply a mechanism for the District Court to determine which Order CIGNA should follow. In fact, the Petitioner has no stake in the funds, other than the fees and penalties that it may be exposed to for failing to comply with either Court Order. Certainty, the Petitioner is placed in a paradox where if it is in compliance with one Order, it is in violation of the other. The District Court was simply asked to resolve this dispute and make a determination as to which Order CIGNA should follow.

If this Court does not accept certiorari with respect to this issue, it will have the practical effect of allowing State Courts *carte blanche* to alter, modify, amend or overrule a Federal Administrative Order with which it does not agree. Ironically, what

happened to the Petitioner was actually the reverse of a true Rooker-Feldman situation: The Claimant was in disagreement with the dictates of a Longshore Order, yet "appealed" to the State Court for relief or rather than seeking readdress through the Federal Administrative System. Because the Rooker-Feldman Doctrine does not apply to cases involving conflicting Federal and State Orders, the opinion below must reversed.

CONCLUSION

For all the aforementioned reasons, the Petitioner requests that this Honorable Court grant this Petition for Certiorari and reverse the Decision of the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

/s/ Frank J. Sioli, Jr.
Counsel of Record
Lawrance B. Craig, III
VALLE, CRAIG, SIOLI,
LYNOTT, P.A.
9155 South Dadeland Boulevard
Dadeland Centre, Suite 1000
Miami, Florida 33156

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Order
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[UNPUBLISHED OPINION]
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-10903

D.C. Docket No. 02-21655-CV-AJ

CIGNA PROPERTY & CASUALTY
Plaintiff-Appellant,

versus

TERESA VILLAR RUIZ,
Defendant-cross-claimant-Appellee,

ANTONIO RUIZ,
Defendant-cross-defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida

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(October 15, 2003)
[Entered: October 15, 2003]

Before HULL, MARCUS and STAHL, Circuit Judges*

PER CURIAM:

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* Honorable Norman H. Stahl, United States Circuit Judge for the First Circuit, sitting by designation.

After review and oral argument, we affirm the district court's dismissal of the Plaintiff-Appellant's interpleader complaint without prejudice for the reasons outlined in the district court's thorough and well-reasoned order, dated January 21, 2003. See Cigna Property & Casualty v. Ruiz, 254 F.Supp.2d 1262 (S.D. Fla. 2003).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 02-21655-JORDAN

CIGNA PROPERTY & CASUALTY)
)
Plaintiff)
)
vs.)
)
TERESA VILLAR RUIZ and ANTONIO RUIZ)
)
Defendants)
_____)

ORDER OF DISMISSAL
[ENTERED JANUARY 21, 2003]

For the reasons which follow, the interpleader complaint in this case [D.E. 1] is DISMISSED WITHOUT PREJUDICE FOR LACK OF SUBJECT-MATTER JURISDICTION.

I. BACKGROUND

On June 4, 2002, Cigna Property & Casualty filed this interpleader action against Teresa Villar Ruiz and her former husband, Antonio Ruiz. The action was brought pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq. *See also* 28 U.S.C. § 2631 (setting forth procedure in action

for interpleader). The complaint alleged the facts set forth below.

A. THE ALLEGATIONS IN CIGNA'S COMPLAINT

On November 11, 1981, while in the employment of Potashnick Construction, Mr. Ruiz was injured. Potashnick and Cigna, its carrier under the LHWCA, accepted the resulting workers' compensation claim as compensable. After litigation between them, Mr. Ruiz, Potashnick, and Cigna entered into a stipulation which declared Mr. Ruiz permanently and totally disabled as of March 10, 1986. This stipulation was memorialized in a compensation order entered by an administrative law judge on June 8, 1990. Pursuant to the joint stipulation and order, Mr. Ruiz was to be paid $496.70 per week. Cigna timely began payments.

As a result of subsequent dissolution proceedings between Ms. Villar Ruiz and Mr. Ruiz in Florida circuit court, *see Ruiz v. Ruiz*, No. 92-41223 (Fla. 11th Jud. Cir.), a state judge issued an income deduction order at Ms. Villar Ruiz's request. This order purported to encompass Mr. Ruiz's workers' compensation payments under the LHWCA. Cigna filed an objection to the order, arguing that the order improperly reached payments under 33 U.S.C. § 916, the anti-alienation provision of the LHWCA. That objection, however, was overruled by the state judge on September 28, 2001.

Cigna then appealed. At the time Cigna filed the interpleader complaint in federal court, its appeal of the income deduction order was pending in Florida's Third District Court of Appeal. *See Cigna*

Property & Casualty v. Ruiz, No. 3D01-3314 (Fla. 3rd DCA).

Cigna alleged in its complaint that it was unable to determine who was entitled to the LHWCA benefits, and requested that Ms. Villar Ruiz and Mr. Ruiz be restrained from instituting any action against it for recovery of such benefits until resolution of the issues raised by the complaint. Cigna also requested that a federal court interpret the LHWCA and determine entitlement to the benefits.

B. Ms. Villar-Ruiz's Cross-Claim Against Mr. Ruiz

Ms. Villar Ruiz filed a cross-claim against Mr. Ruiz. She alleged that Mr. Ruiz had never objected to any of the income deduction orders entered by the state judge, and requested a declaratory judgment with respect to her right to the LHWCA benefits. Mr. Ruiz filed an answer to the cross-claim on November 19, 2002.

C. The Third District's Decision

In a decision on October 23, 2002, the Third District affirmed the income deduction order entered by state judge and rejected Cigna's argument that the order violated 33 U.S.C. § 916, the anti-alienation provision of the LHWCA. *See Cigna Property & Casualty v. Ruiz,* ___So.2d ___, 2002 WL 31373875 (Fla. 3rd DCA 2002) (copy attached). The opinion explained that the state judge had issued the initial income deduction order in 1994, when Mr. Ruiz failed to timely make all of his monthly child support payments, and that Cigna

had abided by this order until late 1996, when it unilaterally decided to discontinue the payments to Ms. Villar Ruiz. Because Mr. Ruiz again began a pattern of sporadic child support payments, the state judge entered a new income deduction order directing Cigna to withhold $628 per month from Mr. Ruiz's monthly LHWCA benefits and to pay that sum to Ms. Villar Ruiz for "on-going child support." *Id.* at *1. In rejecting Cigna's interpretation of § 916, the Third District first ruled that the statute only applied to "claims of creditors" or attachment or execution for "collection of a debt," and then concluded that under Florida law a child support obligation was "not a debt." *Id* at *2. (citing to *Gibson v. Bennett*, 561 So.2d 565, 570 (Fla. 1990)). The Third District distinguished *Thibodeaux v. Thibodeaux*, 454 So.2d 813 (La. 1984), and *Spitalieri v. Spitalieri*, 593 N.Y.S.2d 172, 156 Misc.2d 317 (N.Y. Sup. Ct. 1993) - both of which held that child support obligations were within the scope of § 916 - on the ground that those cases were decided prior to the 1996 amendment to the non-alienation provisions of the Social Security Act, which "has been held to have impliedly repealed the non-alienation provision of the LHWCA with regard to delinquent support obligations." 2002 WL 31373875, at *2 n.2.[1]

Cigna sought panel rehearing, certification to the Florida Supreme Court, and rehearing *en banc*. All of those requests were denied in an order issued on January 15, 2003[2]

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1 *See, e.g., Moyle v. Director, OWCP*, 147 F.3d 1116, 1120-22 (9th Cir. 1998).

2 A copy of the Third District's order is attached.

II. DISCUSSION

When Ms. Villar Ruiz filed a copy of the Third District's opinion, I issued an order to show cause why Cigna's complaint should not be dismissed. In response, Cigna argues that dismissal is inappropriate, and that the very reason for this interpleader action is for a federal court to sort out the conflicting rulings of the administrative law judge and the state courts as to who is entitled to Mr. Ruiz's LHWCA benefits. Ms. Villar Ruiz, on the other hand, believes that the case should be dismissed or, alternatively, that she is entitled to judgment on the pleadings against Mr. Ruiz

A. CONCURRENT STATE JURISDICTION

Cigna's request for relief, and its response to the order to show cause, misapprehend the relationship between state and federal courts and the effect of the Third District's decision on this interpleader action. "Under our 'system of dual sovereignty, [the Supreme Court] ha[s] consistently held that state courts have inherent authority, and thus are presumptively competent, to adjudicate claims arising under the laws of the United States.'" *Yellow Freight System, Inc. v. Donnelly*, 494 U.S. 820, 823 (1990) (holding that state courts have jurisdiction to entertain claims under Title VII of the Civil Rights Act of 1964 because Congress did not affirmatively divest state courts of their presumptively concurrent jurisdiction). To "rebut the presumption of concurrent jurisdiction, the question is not whether any intent at all may be divined from

legislative silence on the issue, but whether Congress in its deliberations may be said to have affirmatively or unmistakably intended jurisdiction to be exclusively federal." *Tafflin v. Levitt*, 493 U.S. 455, 462 (1990) (concluding that state courts have concurrent jurisdiction over civil RICO claims pursuant to 18 U.S.C. §§ 1961-1968) Insofar as the LHWCA is concerned, the Supreme Court has held that a state may apply its workers' compensation scheme to land-based injuries that fall within the coverage of the LHWCA, *see Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715, 719-24 (1980), and state courts routinely interpret and apply the LHWCA. *See, e.g., Spears v. Kajima Engineering & Construction, Inc.*, 124 Cal.Rptr.2d 97, 102-08 (Cal. App. 2nd Dist. 2002); *Babin v. North Florida Shipyards*, 705 So.2d 66. 1997 WL 795067, *1 - *7 (Fla. 1st DCA 1997); *Ode v. Luedtke Engineering Co.* 1997 WL 476830, *1-*6 (Ohio App. 8th Dist. 1997); *AllSouth Stevedoring Co. v. Wilson*, 469 S.E.2d 348, 349-52 (Ga. App. 1996); *Moss v. Dixie Machine Welding & Metal Works, Inc.*, 617 So.2d 959, 960-61 (La. App. 4th Cir. 1993) Indeed, the cases Cigna cites for the proposition that § 916 prohibits the state judge's income deduction order - *Thibodeaux* and *Spitalieri* - are LHWCA cases decided by state courts in Louisiana and New York. The Florida courts therefore had jurisdiction to adjudicate Cigna's federal anti-alienation claim under § 916 of the LHWCA.

Cigna seems to argue in its response to the order to show cause that federal courts have exclusive jurisdiction under the LHWCA. I disagree for the reasons stated above. Moreover, the provision of the LHWCA cited by Cigna in support of its argument, 33 U.S.C. § 918(a), by its own terms only applies to actions

when there is a "default by the employer in the payment of compensation due under any award of compensation." *See Providence Washington Ins. Co. v. Director*, 765 F.2d 1381, 1384 (9th Cir. 1985) ("The abbreviated § 918 procedure is limited to situations where the employer's liability already has been determined under a compensation order and the employer is in default of its payment obligations under that order [.]"). There is no alleged default here by Potashnick or by Cigna, so § 918(a) is inapplicable.[3]

A. THE *ROOKER-FELDMAN* DOCTRINE

Under the so-called *Rooker-Feldman* doctrine, a federal district court lacks jurisdiction to review a state court's ruling. It is black-letter law that only the United States Supreme Court can review state court decisions. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). Although the *Rooker-Feldman* doctrine applies only to litigants who were parties in both the state action and the federal action, *see, e.g., Johnson v. DeGrandy*, 512 U.S. 997, 1006 (1994), all of the parties in this action were parties in the state court proceedings. Moreover, it is apparent from the complaint and from the Third District's opinion that Cigna was able to raise and litigate its federal anti-alienation claim under § 916 of the LHWCA in the state court proceedings. *See Dale v. Moore*, 121 F.3d 624, 626 (11th Cir. 1997) ("The *Rooker-Feldman* doctrine applies as

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[3] Although subject-matter jurisdiction cannot be waived, I note that in its briefs to the Third District - which are attached to the response to the order to show cause - Cigna never questioned the jurisdiction or authority of the Florida courts to pass upon its § 916 claim.

long as the party had a reasonable opportunity to raise his federal claims in the state court proceedings.")[4]

If I were to adjudicate Cigna's interpleader action, I would essentially be acting as an appellate tribunal reviewing the Third District's interpretation of § 916 of the LHWCA. Subject-matter jurisdiction for such federal review, however, is lacking at this level.

Interestingly, Cigna says that it is subject to conflicting orders - the order of the administrative law judge and the order of the state judge - but it seems to me that there really is no conflict. The administrative law judge simply memorialized the parties' stipulation that Mr. Ruiz was entitled to certain monthly benefits under the LHWCA. The dissolution proceedings between Ms. Villar Ruiz and Mr. Ruiz postdated the order entered by the administrative law judge. Thus, the only courts to have ruled on whether a certain portion of the benefits should be paid to Ms. Villar Ruiz for child support, and on whether § 916 of the LHWCA bars such deduction of benefits, are the Florida courts. It seems to me that Cigna, having litigated its § 916 claim in the Florida courts, is subject to and bound by the Third District ruling unless it is

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[4] Though doctrinally different, collateral estoppel and res judicata have a close affinity with the *Rooker-Feldman* doctrine. *See Agripost, Inc. v. Miami-Dade County*, 195 F.3d 1225, 1229 n.7 (11th Cir. 1999). *See also* 28 U.S.C. § 1738 (requiring federal courts to give state court decisions the full faith and credit they would be entitled to under state law). If collateral estoppel were analyzed, Cigna would be prevented from relitigating its § 916 claim in this federal action. All of the elements necessary for application of collateral estoppel under Florida law are present here. *See Community Bank of Homestead v. Torcise*, 162 F.3d 1084, 1086 (11th Cir. 1998) (under Florida law collateral estoppel prevents relitigation of an issue resolved in a prior judicial proceeding "provided that (1) the identical issue has been fully litigated, (2) by the same parties, and (3) a final decision has been rendered by a court of competent jurisdiction").

able to obtain a reversal of that ruling in the Florida Supreme Court or the United States Supreme Court. *See Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 296 (1970). The time for obtaining review of the Third District's decision has not yet run, so Cigna is not yet out of options.

III. CONCLUSION

Cigna's interpleader complaint is DISMISSED WITHOUT PREJUDICE FOR LACK OF SUBJECT-MATTER JURISDICTION under the *Rooker-Feldman* doctrine.

This case is CLOSED.

Done and ordered in chambers at Miami, Florida, this 21st day of January, 2003.

_____

Adalberto Jordan
United States District Judge

copies to counsel of record

Supreme Court, U.S.
FILED
FEB 6 - 2004
OFFICE OF THE CLERK

No. 03-1003

In The Supreme Court of the United States

CIGNA PROPERTY AND CASUALTY,

Petitioner,

v.

TERESA VILLAR-RUIZ

and

ANTONIO RUIZ,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Florida

BRIEF IN OPPOSITION

WILLIAM G. EDWARDS
Counsel of Record
JOSE I. VALDES
MARLOW, CONNELL, VALERIUS, ABRAMS, ADLER, NEWMAN & LEWIS
4000 Ponce de Leon Boulevard
Suite 570
Coral Gables, Florida 33146
Telephone 305-446-0500
Facsimile 305-446-3667
Pro Bono Counsel for Respondent, Teresa Villar-Ruiz

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

PROCEEDINGS BELOW

The Petitioner fails to fully advise the Court of all the related proceedings in this matter. The Respondent submits that a complete recitation of all the proceedings is necessary in order for this Court to fairly consider the relief requested by the Petitioner.

ANTONIO RUIZ and TERESA VILLAR-RUIZ were married to each other and had two children. They were divorced on February 10, 1992. By virtue of the Property Settlement and Separation Agreement incorporated in the Final Judgment for Dissolution of Marriage, ANTONIO RUIZ was obligated to pay child support to TERESA VILLAR-RUIZ for the parties' remaining minor child. Thereafter, MR. RUIZ had a sporadic payment history and in 1994, the state Trial Court issued an Income Deduction Order directed to CIGNA to withhold a portion of MR. RUIZ' Longshoremen & Harbor Worker's Compensation Act benefits to pay for his child support obligations. CIGNA abided by such order until late 1996 when it unilaterally decided to discontinue the payments to MRS. VILLAR-RUIZ. Thereafter, MR. RUIZ once again began a pattern of sporadic child support payments. The case was referred to Child Support Enforcement to no avail. In early 2001, the matter was referred back to the state Trial Court which entered a second Income Deduction Order on May 8, 2001, directed to CIGNA, requiring it to withhold the sum of $628.00 per month from MR. RUIZ's monthly benefit payments and pay it towards his future monthly child support obligations. CIGNA then sought review of the Income Deduction Order with the State of Florida Third District Court of Appeals in the matter of *Cigna Property & Casualty v. Ruiz*, 834 So. 2d 234 (Fla. 3d DCA, 2002). The Third District Court of Appeals affirmed the decision

of the Trial Court on the merits of the dispute. An appeal was taken of that decision to the Florida Supreme Court in the matter of *Cigna Property & Casualty v. Teresa Villar-Ruiz*, Case No. SC 03-279 seeking certiorari review of the decision of the Third District Court of Appeals. By order dated May 19, 2003, the Florida Supreme Court denied the Petition for Certiorari review. CIGNA then sought certiorari review with this Court in the matter of *Cigna Property & Casualty v. Teresa Villar-Ruiz and Antonio Ruiz*, Case No. 03-251. This Court entered an order on October 20, 2003, denying CIGNA's request for certiorari review thereby foreclosing any further appellate review on the merits

While CIGNA was pursuing its appeal in the Third District Court of Appeals, it instituted a separate action. On or about June 4, 2002, CIGNA filed suit in U.S. District Court for the Southern District of Florida. CIGNA sought declaratory relief from the U.S. District Court for its proposition that the Income Deduction Order violated the non-alienation provision of 33 U.S.C.A. §916. While the federal law suit was pending, the Third District Court of Appeals issued its opinion on October 23, 2002. Thereafter, the U.S. District Court issued a Show Cause Order why those proceedings should not be dismissed on account of the decision from the state appellate court. By Order dated January 23, 2003, the U.S. District Court dismissed those proceedings. The U.S. District Court held that when CIGNA elected to submit the dispute to the Third District Court of Appeals for review, in doing so, CIGNA explicitly conferred jurisdiction over the matter to the state appellate court. *See Cigna Property & Casualty v. Ruiz*, 254 F.Supp. 2d 1262 (S.D. Fla., 2003). Having done so and obtained an unfavorable ruling, the U.S. District Court

lacked jurisdiction to review the state court's ruling. Thereafter, the Petitioner filed an appeal to the United States Court of Appeals for the Eleventh Circuit in Case No. 03-10903-B. By order dated October 15, 2003, the 11th Circuit Court of Appeals dismissed that case without prejudice since CIGNA had decided to pursue appellate review of the merits of the matter before this Court in case number 03-251 and as such any decision by the 11th Circuit would amount to nothing more than an advisory opinion. This appeal follows.

REASON FOR DENYING THE PETITION FOR CERTIORARI

This is the second Petition for Certiorari filed by CIGNA in this case which has endured a long and torturous travel through the state and federal courts. By order dated October 20, 2003, this Court declined to grant certiorari review of the merits of this dispute in case number 03-251. CIGNA has exhausted all appellate review of the merits of this matter. The relief which CIGNA is now requesting from this Court constitutes an advisory opinion on a procedural issue decided by the District Court and affirmed by the 11th Circuit Court of Appeals. The utter futility of the Petitioner's position is highlighted by a simple observation. Even if this Court should grant the relief requested by the Petitioner and remand the case on procedural grounds, the Lower Court would then be compelled to enter judgment in favor of the Respondent and against the Petitioner on the merits of this dispute. Accordingly, the Respondent prays that this Court decline to

exercise its discretionary power of certiorari review and close the book on this case for once and for all.

CONCLUSION

The Respondent respectfully submits to this Court that it should deny the Petition for Certiorari filed by CIGNA.

Respectfully submitted,

WILLIAM G. EDWARDS
Counsel of Record
JOSE I. VALDES
MARLOW, CONNELL, VALERIUS,
ABRAMS, ADLER, NEWMAN & LEWIS
4000 Ponce de Leon Boulevard
Suite 570
Coral Gables, Florida 33146
Telephone 305-446-0500
Facsimile 305-446-3667
Pro Bono Counsel for Respondent,
Teresa Villar-Ruiz

(3)

No. 03-1003

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In The Supreme Court of the United States

CIGNA PROPERTY AND CASUALTY,
Petitioner,

v.

TERESA VILLAR RUIZ

and

ANTONIO RUIZ,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

Frank J. Sioli, Jr.
Counsel of Record
Lawrance B. Craig, III
VALLE, CRAIG, SIOLI
& LYNOTT, P.A.
9155 South Dadeland Boulevard
Dadeland Centre, Suite 1000
Miami, Florida 33156
(305) 373-2888

Counsel for Petitioner

THE LEX GROUP ♦ 1108 East Main Street ♦ Suite 1400 ♦ Richmond, Virginia 23219
(804) 644-4419 ♦ (800) 856-4419 ♦ Fax: (804) 644-3660 ♦ www.thelexgroup.com

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III.
ARGUMENT

The Brief in Opposition does not substantiate affirmance of the lower court or denial of certiorari. Indeed, while the Brief in Opposition purports to "fully advise the Court of all the related proceedings in this matter" and alleges that the Petitioner failed to do the same, it is ironic that the Respondent goes on to wholly misstate the basis for the original proceeding in this matter. In fact, contrary to the Respondent's self-serving assertion, the original proceeding in the District Court was not for declaratory relief based on Cigna's "proposition that the Income Deduction Order violated the non-alienation provision of 33 U.S.C.A. § 916". Rather, it was an *Interpleader* action to have the *District Court* determine whether or not the State Court's Order violated 33 U.S.C.A. § 916. Perhaps this is why the Respondent later makes the incorrect conclusion that even if this Court grants the relief requested by the Petitioner, that the lower court would be compelled to enter judgment in favor of the Respondent on the merits. Certainly, while this Court left intact the Third District Court of Appeal's Decision by denying certiorari in Case No. 03-251, a conflict still exists between the Administrative Law Judge's original Order and the Order of the Third District Court of Appeals. Since this Court did not *affirm* the decision of the Third District Court of Appeal, the Interpleader claim could still be heard on the merits by the District Court to resolve the continued conflict. Therefore, the relief which Cigna is requesting is not simply "an advisory opinion", but is rather a mechanism which will finally free the District Court to consider the

Interpleader action on its merits and dispel the conflict between the rival orders, rather than taking the path of least resistance by deciding the issue on jurisdictional grounds without reaching the justicible merits.

IV.
CONCLUSONS

This Court must grant certiorari to review the decision of the lower Court which decided an important question of Federal law which has not been, and should be, settled by this Court. The Court would also decide an important Federal question in a way that conflicts with relevant decisions of this Court. Therefore, certiorari must be granted.

Respectfully submitted,

/s/ Frank J. Sioli, Jr.
Counsel of Record
Lawrance B. Craig, III
VALLE, CRAIG, SIOLI
& LYNOTT, P.A.
9155 South Dadeland Boulevard
Dadeland Centre, Suite 1000
Miami, Florida 33156